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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,378	06/01/2001	Robert R. Turvey	J-2904	2808

7590 11/21/2005

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EXAMINER

PARADISO, JOHN ROGER

ART UNIT PAPER NUMBER

3721

DATE MAILED: 11/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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9,872,378

EXAMINER

ART UNIT	PAPER
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11132005

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Commissioner for Patents

Examiner notes that the Appeal Brief submitted on 4/6/2005 includes a claim index and is being forwarded, along with the enclosed Examiner's Answer, to the BPAl.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/872,378
Filing Date: 6/1/2001
Appellant(s): TURVEY

MAILED

NOV 21 2005

Group 3700

William McCracken
For Appellant

EXAMINER'S ANSWER

This is in response to the corrected appeal brief filed 4/6/2005.

Art Unit: 3721

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

Art Unit: 3721

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes no statement that claims 1-36 do not stand or fall together.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5956924

THIEMAN

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-36 are rejected under 35 U.S.C. 103(a). This rejection is set forth in paragraphs 2-8 of the previous Office Action, mailed on 2/17/2004.

Art Unit: 3721

(11) *Response to Argument*

Applicant states on page 4 of his Appeal Brief that “Thieman discloses a pattern on the end stops that is no more distinctive than any other features of the bag.”

However, while it may not appear distinctive in the manner that Appellant states, the cross-hatching shown by THIEMAN are nevertheless distinctive in that they are not haphazardly placed, nor in a variety of patterns. This distinctiveness would, for instance, enable a machine operator to tell by looking if the weld were performed properly or not.

Applicant states on page 5 of his Appeal Brief that “From the foregoing, it is evident that the purpose of the end stops so to restrain the slider on the bag and to provide leak-resistance. There is no express or implied teaching that the pattern of the end stops provides a sensible indication of anything.

However, as stated in the rejection, “the claimed ‘indicia’ are being read on the pattern formed on the endstops of THIEMAN, since indicia is broadly defined as ‘distinctive marks’ (Merriam Webster Dictionary) and the patterned marks on the endstops of THIEMAN are distinctively patterned.” While the disclosure of THIEMAN does not discuss the reason for the pattern in the endstops, the pattern is nonetheless clear, as shown in the figures.

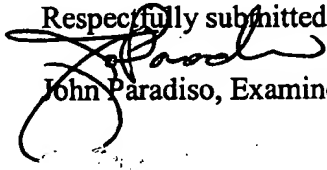
Art Unit: 3721

Applicant states on page 4 of his Appeal Brief that "It is Appellant's contention that the new and unobvious functional relationship requirement necessary for apparatus claims is irrelevant to the question of patentability of method claims."

However, Appellant appears to be trying to sidestep the requirements of 35 USC 103 by stating they do not apply in this instance. Examiner disagrees for reasons set forth in the text of 35 USC 103.

For the above reasons, it is believed that the rejections should be sustained.


Respectfully submitted,

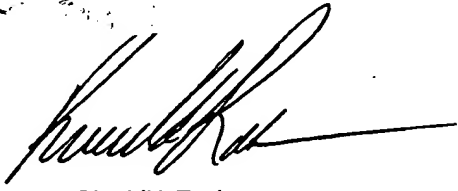

John Paradiso, Examiner

NOVEMBER 13, 2005

Conferees:

Rinaldi Rada, SPE 

Gene Kim, Primary Examiner 


Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700